

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

DONALD L. MCCUNE,

Plaintiff,

v.

CIVIL ACTION NO. 3:14-30867

UNITED STATES OF AMERICA,

Defendant.

**MEMORANDUM OPINION AND ORDER**

This action was referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that Defendant's Motion to Dismiss be granted (ECF No. 5) and Plaintiff's Complaint (ECF No. 1) be dismissed, without prejudice, and removed from the docket of the Court. Neither party has filed objections to the Magistrate Judge's findings and recommendations.

Accordingly, the Court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and **ORDERS** that Defendant's Motion to Dismiss be **GRANTED** (ECF No. 5) and Plaintiff's Complaint (ECF No. 1) be **DISMISSED, without prejudice**, and **REMOVED** from the docket of the Court, consistent with the findings and recommendations.

The Court **DIRECTS** the Clerk to forward copies of this written opinion and order to all counsel of record, and any unrepresented parties.

ENTER: November 25, 2015

  
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ROBERT C. CHAMBERS, CHIEF JUDGE